

The Appeals Board finds that the issues above listed are found within K.S.A. 44-534a as jurisdictional issues appealable from preliminary hearings and, as such, the Appeals Board has the jurisdiction to decide this matter.

Claimant, an operator with respondent, alleged injury on December 19, 1994 while working the 4:00 to midnight shift. Claimant alleged he spent a significant period of time on the date of injury bending over and developed low-back pain as a result. Claimant claimed to have advised both his co-worker, Mr. Robert (Red) Parrish, and the senior operator, Mr. Wayne Ensminger of his injury. Both Mr. Ensminger and Mr. Parrish testified, contradicting claimant's testimony, indicating neither had been advised by claimant of any injury on or about December 19, 1994. Claimant spoke to Mr. John Warren, the plant manager, on numerous occasions after December 19, 1994, but failed to advise Mr. Warren of any work-related injury until after an incident occurring in claimant's shower at home on January 9, 1995.

When claimant talked to Mr. Warren on January 9, 1995 about needing medical treatment, he advised Mr. Warren he had injured himself in the shower when his back locked up.

Claimant did not allege a work-related injury to Mr. Warren until January 13, 1995, when claimant's wife called Mr. Warren from the pharmacy regarding payment of a \$50.00 prescription from claimant's treating physician.

In proceedings under the Workers Compensation Act, the burden shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g). K.S.A. 44-501 requires, that, in order for a claim to be compensable, claimant must have suffered personal injury by accident arising out of and in the course of his employment.

The credible evidence in this matter indicates that the claimant, while alleging personal injury on December 19, 1994, failed to advise any of his co-workers or his supervisor of this alleged injury. Claimant further failed to seek medical care until after an incident occurring at home on January 9, 1995. The Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence accidental injury arising out of in the course of his employment on December 19, 1994.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson dated April 10, 1995, is affirmed.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Robert A. Anderson, Ellinwood, Kansas
 Douglas C. Hobbs, Wichita, Kansas
 George R. Robertson, Administrative Law Judge
 George Gomez, Director